

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

UNITED STATES OF AMERICA)
) Case No. 5:01CR30075
v.)
)
) **OPINION AND ORDER**
RICHARD L. FULTON,)
)
) By: James P. Jones
) Defendant.) Chief United States District Judge

On May 21, 2003, the court sentenced the defendant in connection with a crack cocaine conviction. In so doing, the court considered the federal sentencing guidelines as required under 18 U.S.C. § 3553(a).

Pursuant to its statutory authority, the United States Sentencing Commission has amended the federal advisory sentencing guidelines applicable to criminal cases involving cocaine base or crack cocaine, effective November 1, 2007. On December 11, 2007, the Sentencing Commission further decided that, effective March 3, 2008, the amended guideline provisions will apply retroactively to offenders who were sentenced under prior versions of the sentencing guidelines, and who are still incarcerated. Stated generally, the practical effect of the Sentencing Commission's actions is that certain federal defendants convicted of offenses involving crack cocaine may be eligible for a reduction in their current sentences, pursuant to the provisions of 18 U.S.C. § 3582(c)(2).

On April 24, 2008, the court received a letter from the defendant which the court treated as a Motion to Reduce Sentence pursuant to § 3582(c)(2).

Having considered the defendant's Motion to Reduce Sentence, the court concludes that the motion must be denied. The defendant pled guilty to conspiracy to distribute crack cocaine, in violation of 21 U.S.C. § 846, and being a felon in possession of a firearms, in violation of 18 U.S.C. § 922(b)(1). Pursuant to a plea agreement, the defendant was held responsible for in excess of 1.5 kilograms of crack cocaine. Under the amended guidelines, that amount of crack cocaine correlates with a base offense level of 36. After accounting for a two-level increase for possessing a firearm during the crack cocaine conspiracy, a four-level increase for being an organizer and leader in the conspiracy, and a three level reduction for acceptance of responsibility, the defendant has a Total Offense Level of 39. With a Criminal History Category of V, the amended guidelines recommend a term of incarceration between 360 months and life, the same as at the defendant's original sentencing. Because the recommended guideline range has not changed, this court lacks authority to reduce the defendant's sentence.

Accordingly, it is **ORDERED** that the defendant's Motion to Reduce Sentence (Doc. No. 72) is **DENIED**.

The Clerk will send copies of this order to the defendant at his place of

confinement and to the United States Attorney's Office.

ENTER: May 8, 2008

/S/ JAMES P. JONES
Chief United States District Judge